

NATHAN CLARK

NAME

#57779 • C4-220L

PRISON NUMBER

P.O. BOX 5006

CURRENT ADDRESS OR PLACE OF CONFINEMENT

CALIPATRIA, CA. 92233

CITY, STATE, ZIP CODE

FILED

OCT 12 2010

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

2254	1043
FILING FEE PAID	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
PREP MOTION FILED	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
COPIES SENT TO	Court <input checked="" type="checkbox"/> ProSe <input type="checkbox"/>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 CV 2149 BEN RBB

NATHAN CLARK

(FULL NAME OF PETITIONER)

PETITIONER

v.

L. S. MCEWEN (WARDEN)

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

The Attorney General of the State of California, Additional Respondent.

Civil No

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

EVIDENTIARY HEARING REQUESTED

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: _____

IMPERIAL COUNTY SUPERIOR COURT

2. Date of judgment of conviction: MARCH 19, 2010

3. Trial court case number of the judgment of conviction being challenged: _____

EHC01298

(YA022456

CONVICTION # FOR CURRENT INCARCERATION

4. Length of sentence: 90 DAYS FORTIETURE OF CREDITS

CR

5. Sentence start date and projected release date: SEPT. 5, 2019
DEC. 5, 2019

6. Offense(s) for which you were convicted or pleaded guilty (all counts):

① 3041(a) PERFORMANCE, ② 3041(a) PERFORMANCE
 ③ 3041(a) PERFORMANCE

7. What was your plea? (CHECK ONE)

- (a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

- (a) Jury ☐
 (b) Judge only ☒

9. Did you testify at the trial?

- ☒ Yes ☐ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?

- ☐ Yes ☒ No

11. If you appealed in the California Court of Appeal, answer the following:

- (a) Result: _____
 (b) Date of result (if known): _____
 (c) Case number and citation (if known): _____
 (d) Names of Judges participating in case (if known): _____
 (e) Grounds raised on direct appeal: _____

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

- (a) Result: DENIED
 (b) Date of result (if known): 8-18-10
 (c) Case number and citation (if known): 5183049
 (d) Grounds raised: "STACKING" C.D.C.R. RULE VIOLATIONS
115'S, IS ILLEGAL & PETITIONER SHOULD HAVE THE
EXCESSIVE 115'S DROPPED & DISMISSED AS TO POLICY

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: _____
- (b) Date of result (if known): _____
- (c) Case number and citation (if known): _____
- (d) Grounds raised: _____
- _____
- _____
- _____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number (if known): _____
- (b) Nature of proceeding: _____
- (c) Grounds raised: _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result: _____
- (f) Date of result (if known): _____

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

- (a) California Court of Appeal Case Number (if known): _____
- (b) Nature of proceeding: _____
- (c) Names of Judges participating in case (if known) _____
- (d) Grounds raised: _____
- (e) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (f) Result: _____
- (g) Date of result (if known): _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?

☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

- (a) California Supreme Court Case Number (if known): _____
- (b) Nature of proceeding: _____
- (c) Grounds raised: _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result: _____
- (f) Date of result (if known): _____

20. If you did **not** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court containing the grounds raised in this federal Petition, explain briefly why you did not:

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? _____

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: _____

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present **all** other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUND FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** PETITIONER WAS DENIED HIS DUE PROCESS OF RIGHTS & LAW, IN THAT, PETITIONER WAS SUBSTAINED 3 CONSECUTIVE IIS RULE VIOLATIONS FOR "JOB PERFORMANCE" & UNDER C.D.C.R POLICY THIS IS ILLEGAL AS TO STACKING OF CREDIT LOSS & PETITIONER SHOULD HAVE ONLY RECEIVED CREDIT ~~LOSS~~ LOSS FOR ONE OF THE IIS RULE VIOLATION AS SUPPORTED BY POLICY. VIOLATION OF PETITIONER'S DUE PROCESS OF LAW & EQUAL PROTECTION GUARENTEED BY 14 AMEND. U.S. CONST. SUPPORTING FACTS: SEE ATTACHMENTS

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): HABEAS PETITION
 (2) Case number or citation: 5183049
 (3) Result (attach a copy of the court's opinion or order if available): DENIED

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MC-275

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

It is against CDCR policy, to "STACK" 115's, to write a person a disciplinary write up, for the same offense of Job Performance, until the initial 115 is heard and if it is done, the Hearing Officer in the interest of justice should drop, the overlapping, same offense 115s, in violation of Policy.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

On 7-20-05, I was written a 115 rule violation for the specific act of Performance 3041(A) with the disposition and recommendation of being taken to ICC and removed from job assignment. On 7-21-05, and also 7-22-05 (2) two more 115 write ups ensued Petitioner for the same offense and with same disposition of job removal and job unassignment, (see Attachments 115 rule violations log# 7-05-A-050, 7-05-A-064 and also 7-05-A-065)

On 8-9-05 Petitioner was heard by CDCR Hearing Officer, on all (3) Three 115's and Petitioner was found guilty of offense of job performance for all (3) three, 115's and Petitioner received (30) Thirty Days loss of credit Good time Work time credits for all (3) three 115's which afforded Petitioner a full credit loss of a total (90) Ninety days (see Attachments CDC 128-B's and 115 rule violation report part C log# 07-05-A-050)

Upon learning that "Stacking 115's was illegal and against CDCR policy

(SEE GROUND 1 CONTINUATION)

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

5th and 14th AMENDMENT of CONSTITUTION DUE PROCESS OF LAW VIOLATION

In RE BIRDWELL (1996) 58 CR. 2nd 244

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GROUND 1 CONTINUATION

1 Petitioner filled a Administrative Grivence 602 Appeal form
2 with CDCR on January 10 2010 to resolve issue and recieve
3 back the extra (60) Sixty days that were taken in excess of
4 CDCR policy against "STACKING" 115's and Petitioner was denie
5 this access to this administrative review based on I Petitioner
6 was told that there has been to much and to Great of a Time
7 Lapse for Me Petitioner to have his Grievance heard and
8 Petitioner Contended this finding by stating and letting Appeal
9 Coordinatator for CDCR at CALIPATRIA STATE PRISON aware that the
10 COURTS do not have a Time restriction on the awarding and
11 Granting of "ILLEGAL SENTENCING" CORRECTIONS ,upon the relaying
12 of this message Petitioner was still denied access to pursue
13 His appeal and Grievance on a administrative level. So Petitioner
14 Finds His Self and person Appealing His Grievance and Appeal to
15 a Higher Tribunal to recieve Redress and Fair Judgement of
16 this Illegal Stacking of Petitioners 115's for job performance
17 which goes against CDCR Policy and Suffers Petitioner Injustices
18

19 ALSO SEE PETIONERS EVIDENCE AND EXHIBITS OF CDCR 115's that have been dropped and dismissed
20 on the grounds of "STACKING" Log# 08-08-C-013 Date 8-11-08 and also Log# 08-08-C-035 Date
21 8-21-08 of Inmate Tanner CDC# E-29255

22 Petitioner seeks to have His (60) sixty days of credit restored and have Excessive 115's
23 dismissed and removed from Petitioners CDCR FILE. The (2) two 115 rule violations dated
24 7-21-05 and 7-22-05.

25
26 (SEE CONTINUATION OF GROUND)
27
28

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7. Ground 2 or Ground _____ (if applicable):

a. Supporting facts:

(CONTINUATION OF GROUND 1)

Following In re Birdwell (1996) 58 CR.2nd 244, Imposition of unauthorized sentence is act which is in excess of court's jurisdiction and may be subject of later review even after affirmance of judgement on direct appeal; unauthorized sentences is not subject to Harmless error, nor does it ripen into sentence authorized by Law with passage of time.

General rule that unexplained delay in seeking relief may bar Habeas Corpus relief does not apply to bar correction of unauthorized sentence.

Failure to object to defective verdict's ,failure to specify degree of offense, which necessarilly results in punishment greater than that authorized by Jury, does not bar Granting of Habeas Corpus relief under theory of waiver or invited Error..

Petitioner aserts that His claims and Grounds fall on the Integrity of CDCR Hearing officer at the time of Petitioners hearing on Grounds of not violating there own Laws and Procedures, in the Interest of Justice when these Procedures are based on Integrity of said officers in the event of these hearings. Petitioner aserts He has a Right of Due Process of Law in these proceedings, that should be upheld and Honored under Constitutional Fairness.

b. Supporting cases, rules, or other authority:

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RESPONSE TO DENIAL

REASON (1) CLAIMS ASSERTED IN PETITIONS FOR WRIT OF HABEAS CORPUS MUST BE RAISED AS PROMPTLY AS CIRCUMSTANCES ALLOW;

REASON (2) A COURT WILL NOT CONSIDER ISSUES NOT RAISED IN A TIMELY MATTER.

REASON (3) PETITIONER HAS FAILED TO EXPLAIN THE SIGNIFICANT DELAY IN THIS MATTER.

PETITIONER'S ASSERTIONS AND CONTENTIONS

PETITIONER ASSERTS AND CONTENTS, THAT THIS VIOLATION HE IS CONTENDING OF HIS 5TH AND 14TH AMENDMENT RIGHT TO DUE PROCESS IS A CONTENTION OF A ILLEGAL SENTENCE FOLLOWING IN RE BIRDWELL 58 C.R 2ND 244 1996, PEOPLE V SMITH 102 C.R 2ND 731, SCOTT 36 C.R 2ND 627, WELCH 19 C.R 2D 520 PEOPLE V MORGAN 83 C.R 411. AND PETITIONER ASSERTS THAT THE UNDERLINING VIOLATION OF HIS 5TH AND 14TH AMENDMENT TO DUE PROCESS AND EQUAL PROTECTIONS IN THE NOT RECEIVING JUSTICE ON AN ADMINSTRATIVE LEVEL OF THIS INFRACTION.

PETITIONER ASSERTS AND CONTENTS, THAT HE DID EXPLAIN THE SIGNIFICANT DELAY IN THIS MATTER, TO RECEIVE REDRESS, AND THAT WAS EXPLAINED IN PETITIONERS HABEAS WRIT TO SUPERIOR COURT (SEE ATTACHMENTS) AS PETITIONER STATES OF WHEN, TIME HE WAS MADE AWARE OF THE KNOWLEDGE OF THIS "STACKING POLICY" AND THAT IT WAS "ILLEGAL" AND ONCE MADE AWARE, PETITIONER ASSERTED HIS DUE DILLIGENCE IN SEEKING TO HAVE THIS

1 MATTER RESOLVED AND TO SEEK REDRESS (SEE ATTACHMENTS)
2 PETITIONER ASSERTS AND CONTENDS ALSO
3 THIS LOSS OF CREDIT MATTER OF GOOD/TIME WORK/TIME
4 CREDIT IS A MATTER OF AN ILLEGAL SENTENCE
5 BASED ON C.D.C.R. POLICY AGAINST STACKING R.V.R
6 RVLS VIOLATION REPORTS AS BEING ILLEGAL, PETITIONER
7 ASSERTS THE FOLLOWING OF IN RE BIRDWELL 58 CR-
8 2ND 244 (1996) "GENERAL RULE THAT UNEXPLAINED
9 DELAY IN SEEKING RELIEF MAY BAR HABEAS CORPUS
10 RELIEF, DOES NOT APPLY TO BAR CORRECTION OF
11 UNAUTHORIZED SENTENCE." AS STATED IN RE BIRDWELL
12 (1996) PETITIONER ASK RESPECTFULLY THAT HIS HABEAS
13 CORPUS WRIT OF THE CHALLENGE OF AN UNAUTHORIZED
14 SENTENCE BE GRANTED AND THE ILLEGAL LOSS OF GOOD/
15 WORK TIME CREDITS BE RESTORED AS PREVIOUSLY
16 ASKED IN SUPERIOR COURT (SEE ATTACHMENTS)
17 ALSO FOLLOWING PEOPLE V SMITH 102 C.R 2D 731
18 "OBVIOUS LEGAL ERRORS AT SENTENCING THAT ARE
19 CORRECTABLE W/OUT REFERRING TO FACTUAL FINDINGS
20 IN THE RECORD OR REMANDING FOR FURTHER FINDINGS
21 ARE NOT WAIVABLE" ALSO SENTENCING ERRORS EXEMPT
22 FROM THE WAIVER RULE SCOTT 36 C.R 2ND 627
23 ALSO UNAUTHORIZED SENTENCES OR SENTENCES
24 ENTERED IN EXCESS OF JURISDICTION WELCH 19 C.R 2D
25 520 , ALSO FOLLOWING PEOPLE V MORGAN 83
26 C.R, 411 "AN UNAUTHORIZED SENTENCE INVOLVING
27 PURE QUESTIONS OF LAW IS REVIEWABLE AT ANY
28 TIME".

ATTACHMENTS OF 115 RULE VIOLATIONS LOG#

07-05-A-050, 07-05-A-064 and also 07-05-A-065 3 PAGES...

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RECEIVED CAL APPEALS JAN 12 2010

STATE OF CALIFORNIA
RECEIVED CAL APPEALS JAN 20 2010
RULES VIOLATION REPORT

DEPARTMENT OF CORRECTIONS

CDC NUMBER H-5777	INMATE'S NAME CLARK	RELEASE/BOARD DATE	INST. CSP-CAL	HOUSING NO. A1-141L	LOG NO. 07-05-A-050
VIOLATED RULE NO(S). 3041 (a)		SPECIFIC ACTS PERFORMANCE	LOCATION FAC. A "PRG"	DATE 07/20/05	TIME 1430
CIRCUMSTANCES					

On Wednesday, July 20, 2005, at approximately 1430 hours, while performing my duties as Facility "A" SGE, I observed Inmate CLARK, H-57779, A1-141L, who is assigned as a 3/W Program Porter, position #PIR.A.631, rdb's M/T, work hours 1400-2130, sitting inside the Clerks Office at a desk doing nothing. I advised Inmate CLARK that he needed to empty the trash can and sweep up the floor in the hallway inside the Program Office. Approximately 30 minutes later I noticed Inmate CLARK was still sitting in the Clerks Office and had not completed his tasks I assigned him to do. I advised Inmate CLARK to get to work and that he needed to complete his task. At about 1600 hours, I again observed Inmate CLARK in the Clerks Office doing nothing. I advised Inmate CLARK to clean up the Staff restroom & replenish the paper towel dispenser. He replied "OK". However he still sat there and made no attempts to get up. I told Inmate CLARK that he needed to be done at that time. He again stated, "OK, I got it". Approximately one (1) hour later I walked into the Staff restroom and noticed it still had not been cleaned. I have counseled Inmate CLARK about his job performance and is aware of his job expectations. It should be noted that Inmate CLARK has received numerous 115's for his job performance. I am requesting he be taken to ICC and be removed from his job assignment. Inmate CLARK is not a participant in the MENTAL HEALTH SERVICES DELIVERY SYSTEM (MHSDS). Inmate CLARK is aware of this report.

REPORTING EMPLOYEE (Typed Name and Signature) ▶ N. MEJIA, CORRECTIONAL OFFICER						DATE 7-15		ASSIGNMENT FAC. A SEE		RDO'S S/S		
REVIEWING SUPERVISOR'S SIGNATURE E. SILVA, CORRECTIONAL SERGEANT				DATE		<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING						
				DATE		LOC.						
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS		OFFENSE DIVISION: F 030		DATE 7/24/08		CLASSIFIED BY (Typed Name and Signature) ▶ M. Jaramila				HEARING REFERRED TO <input type="checkbox"/> HO <input type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC		
<input type="checkbox"/> CDC 115		BY: (STAFF'S SIGNATURE) ▶ [Signature]		DATE 7/25/08		TIME 1200		TITLE OF SUPPLEMENT T...				
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER:		BY: (STAFF'S SIGNATURE) ▶		DATE		TIME		BY: (STAFF'S SIGNATURE) ▶				
								DATE				
								TIME				

SCREENED OUT JAN 1-2 2010

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

ACTION BY: (TYPED NAME) **SCREENED OUT JAN 20 2010**

ACTION BY: (TYPED NAME)		SIGNATURE		DATE	TIME
REVIEWED BY: (SIGNATURE)		DATE	CHIEF DISCIPLINARY OFFICER'S SIGNATURE	DATE	
<input type="checkbox"/> COPY OF CDC 115 GIVEN INMATE AFTER HEARING		BY: (STAFF'S SIGNATURE)		DATE	TIME
CDC 115 (7/88)		13 OF 51			

STATE OF CALIFORNIA

RULES VIOLATION REPORT

804 SENT TO RECORDS: /

DEPARTMENT OF CORRECTIONS

2005

CDC NUMBER H-57779	INMATE'S NAME CLARK	RELEASE/BOARD DATE	INST. CSP-CAL	HOUSING/NO. A1-143	LOG NO. 07-05-A-064
VIOLATED RULE NO(S). CCR§ 3041 (A)		SPECIFIC ACTS PERFORMANCE	LOCATION FAC."A" PROGRAM	DATE 07/21/05	TIME 1400 HOURS

On Thursday, July 21, 2005, at approximately 1400 hours, while performing my duties as Facility "A" S&E. I advised Correctional Officer M. HURTADO A1 Control Booth Officer via Institutional telephone to release Inmate CLARK, H-57779, A1-143 for work in the program office position # PTR 631, RDO's Mon/Tue, work hours 1400-2130. Approximately 20 minutes later Correctional Officer J. ORTIZ (A1 Floor Officer #1) advised me that inmate CLARK stated he would not be going to work. It should be noted that Inmate CLARK did receive a CDC 115 06/02/05, and on 02/06/05 for failure to report to work. I am requesting Inmate CLARK be taken to ICC and be removed from his assignment. Inmate CLARK is not a participant in the Mental Health Services Delivery System. Inmate CLARK is aware of this report

REPORTING EMPLOYEE ➤ N. MEJIA Correctional Officer		DATE 07/21/05	ASSIGNMENT FAC."A" S&E	RDO'S
REVIEWING SUPERVISOR'S SIGNATURE ➤ R. TORRES, Correctional Sergeant		DATE	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING	
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> SERIOUS	OFFENSE DIVISION	DATE	CLASSIFIED BY (Typed Name and Signature) ➤	LOC. HEARING REFERRED TO <input type="checkbox"/> HO <input type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC
COPIES GIVEN TO INMATE BEFORE HEARING				
<input type="checkbox"/> CDC 115	BY: (STAFF'S SIGNATURE) ➤	DATE:	TIME:	TITLE OF SUPPLEMENT
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER:	BY: (STAFF'S SIGNATURE) ➤	DATE:	TIME:	BY: (STAFF'S SIGNATURE) ➤
HEARING:				

<input type="checkbox"/> REFERRED TO	<input type="checkbox"/> CLASSIFICATION	<input type="checkbox"/> BPT/NAEA
ACTION BY: (TYPED NAME)		
REVIEWED BY (SIGNATURE) ➤	SIGNATURE ➤	DATE
SCREENED OUT JAN 1 2 2010	CHIEF DISCIPLINARY OFFICER'S SIGNATURE ➤	DATE
COPY OF CDC 115 GIVEN INMATE AFTER HEARING	BY: (STAFF'S SIGNATURE) ➤	DATE
CDC 115 (7/88)		TIME

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RECEIVED CAL APPEALS JAN 1 2 2010

52

STATE OF CALIFORNIA

RECEIVED CAL APPEALS JAN 2 0 2010

804 SENT TO RECORDS: /

DEPARTMENT OF CORRECTIONS

2005

CDC NUMBER H-57779	INMATE'S NAME CLARK	RELEASE/BOARD DATE	INST. CSP-CAL	HOUSING/NO. A1-143	LOG NO. 07-05-A-065
VIOLATED RULE NO(S) CCR§ 3041 (A)		SPECIFIC ACT'S PERFORMANCE		LOCATION FAC."A" PROGRAM	DATE 07/22/05 TIME 1405 HOURS

On Friday, July 22, 2005, at approximately 1405 hours, while performing my duties as "A" S&E. I advised via Institutional telephone Correctional Officer J. ORTIZ (A1 Floor Officer) to release Inmate CLARK, H-57779, A1-143 for work. Inmate CLARK is assigned to position # PTR 631, RDO's Mon/Tue, work hours 1400-2130. Approximately 5 minutes later Correctional Officer J. ORTIZ advised me that inmate CLARK would not be going to work. Inmate CLARK stated: "I'm taking a vacation and I don't care". It should be noted that Inmate CLARK has receive 115's for this same offense on 06/21/05, 06/02/05, and on 02/06/05. I am requesting Inmate CLARK be taken to ICC and be removed from his assignment. Inmate CLARK is not a participant in the Mental Health Services Delivery System. Inmate CLARK is aware of this report

REPORTING EMPLOYEE ➤ N. MEJIA Correctional Officer		DATE 07/21/05	ASSIGNMENT FAC."A" S&E		RDO'S *
REVIEWING SUPERVISOR'S SIGNATURE ➤ R. TORRES, Correctional Sergeant		DATE	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING		
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> SERIOUS	OFFENSE DIVISION	DATE	CLASSIFIED BY (Typed Name and Signature) ➤		LOC. HEARING REFERRED TO <input type="checkbox"/> HO <input type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC
COPIES GIVEN TO INMATE BEFORE HEARING					
<input type="checkbox"/> CDC 115	BY: (STAFF'S SIGNATURE) ➤	DATE:	TIME:	TITLE OF SUPPLEMENT	
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER:	BY: (STAFF'S SIGNATURE) ➤	DATE:	TIME:	BY: (STAFF'S SIGNATURE) ➤	DATE TIME

HEARING:

<input type="checkbox"/> REFERRED TO <input type="checkbox"/> CLASSIFICATION <input type="checkbox"/> BPT/NAEA	ACTION BY: (TYPED NAME)			
REVIEWED BY (SIGNATURE) ➤		SIGNATURE ➤		DATE TIME
COPY OF CDC 115 GIVEN INMATE AFTER HEARING		CHIEF DISCIPLINARY OFFICER'S SIGNATURE ➤		DATE
BY: (STAFF'S SIGNATURE) ➤		DATE		TIME

CDC 115 (7/88)

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ATTACHMENTS OF CDC 128-B's and 115 RULE VIOLATIO
REPORT PART C LOG# 07-05-A-050, LOG# 07-05-A-064, and LOG# 07-05-A-06
4 PAGES...

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RECEIVED CAL APPEALS JAN 1 2 2010

RECEIVED CAL APPEALS JAN 2 0 2010

NAME & NUMBER: CLARK H-57779

HOUSING A1-141U

CDC 128-B

On Tuesday, August 09, 2005, at approximately 1730 hours, Inmate CLARK, appeared before me in regards to a Serious Rules Violation Log# 07-05-A-064. As part of the disposition Inmate CLARK was found GUILTY and assessed the following LOSS OF PRIVILEGE:

30 Days LOSS OF PHONE Beginning on 08/09/05 and Ending on 09/09/05.
10 Days LOSS OF YARD Beginning on 08/09/05 and Ending on 08/19/05.
30 Days LOSS OF DAYROOM Beginning on 08/09/05 and Ending on 09/09/05.

Orig : Central File
CC : Program Lieutenant
CCI
Housing Unit
Inmate

J.J. SANTANA, CORRECTIONAL LIEUTENANT
Facility "A" B/W

(LOSS OF PRIVILEGE)

DATE 08/09/05
SCREENED OUT JAN 1 2 2010
SCREENED OUT JAN 2 0 2010

GENERAL CHRONO

INST: CAL

NAME & NUMBER: CLARK H-57779

HOUSING A1-141U

CDC 128-B

On Tuesday, August 09, 2005, at approximately 1740 hours, Inmate CLARK, appeared before me in regards to a Serious Rules Violation Log# 07-05-A-065. As part of the disposition Inmate CLARK was found GUILTY and assessed the following LOSS OF PRIVILEGE:

30 Days LOSS OF PHONE Beginning on 08/09/05 and Ending on 09/09/05.
10 Days LOSS OF YARD Beginning on 08/09/05 and Ending on 08/19/05.
30 Days LOSS OF DAYROOM Beginning on 08/09/05 and Ending on 09/09/05.

Orig : Central File
CC : Program Lieutenant
CCI
Housing Unit
Inmate

J.J. SANTANA, CORRECTIONAL LIEUTENANT
Facility "A" B/W

(LOSS OF PRIVILEGE)

DATE 08/09/05
SCREENED OUT JAN 1 2 2010
SCREENED OUT JAN 2 0 2010

GENERAL CHRONO

INST: CAL

SCREENED OUT JAN 1 2 2010
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STATE OF CALIFORNIA
RECEIVED CAL APPEALS JAN 12 2010

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DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

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CDC NUMBER H-57776	INMATE'S NAME RECEIVED CAL APPEALS JAN 20 2010	LOG NUMBER 07-05-A-050	INSTITUTION CSP-CAL	TODAY'S DATE 07/25/05
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

DISPOSITION: Inmate CLARK was assessed the following:

1. Thirty (30) Days Forfeiture of Credits consistent with a Division 'F' Offense.

Inmate CLARK was notified as to CCR 3327, Restoration of Forfeited Credits; CCR 3328, Disciplinary Free Periods, and CCR 3329, Extraordinary Circumstances.

Inmate CLARK was counseled and reprimanded regarding program expectations and was advised about future behavioral expectations.

Inmate CLARK was advised of his right to appeal the Findings and/or Disposition of this Disciplinary Hearing, pursuant to CCR 3084.1, and also advised that he would receive a completed copy upon final audit by the Chief Disciplinary Officer (CDO). The review and signature of the CDO affirms, reverses, or modifies this Disciplinary action and/or credit forfeiture and constitutes the First Level of Review for Appeal Purposes.

SCREENED OUT JAN 12 2010

SCREENED OUT JAN 20 2010

☒ COPY OF CDC 115-C GIVEN TO INMATE

SIGNATURE OF WRITER T. SWETCH, CORRECTIONAL LIEUTENANT		DATE SIGNED 8-30-05	
GIVEN BY: (Staff's Signature) <i>[Signature]</i>		DATE SIGNED 08/06/05	TIME SIGNED 1145

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

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RULES VIOLATION REPORT - PART C

CDC NUMBER H-57779	INMATE'S NAME CLARK	LOG NUMBER 07-05-A-064	INSTITUTION CSP-CAL	TODAY'S DATE 08/09/05
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

On Tuesday, August 09, 2005, at approximately 1730 hours, Inmate CLARK, H-57779, appeared before me in regards to this Rules Violation Report log #07-05-A-064. Inmate CLARK stated that he was in good health, acknowledged receipt of all reports, and was ready to proceed with this hearing. All time constraints and due process HAVE been met. Inmate CLARK is not a participant in the MENTAL HEALTH SERVICES DELIVERY SYSTEM (MHSDS).

STAFF ASSISTANT: A Staff Assistant was not assigned pursuant to CCR 3315(d)(2).

INVESTIGATIVE EMPLOYEE: An Investigative Employee was waived by Inmate CLARK as noted by his signature on the CDC-115A. An IE was not assigned pursuant to CCR 3315(d)(1). #

INMATES PLEA: The charges were read to Inmate CLARK and he pled GUILTY.

INMATES STATEMENT: Inmate CLARK had no comment regarding this Rules Violation Report.

WITNESSES: Inmate CLARK chose not to have witnesses present during the hearing, as noted by inmate CLARK'S signature on the CDC-115A.

FINDINGS: Inmate CLARK was found GUILTY of having violating CCR Section 3041 (a) for the specific Act of: PERFORMANCE. This finding is based upon the preponderance of evidence submitted at the hearing, which is considered valid and does substantiate the charge. The evidence includes

: The Reporting Employees written report, which states in part: "I advised Correctional Officer M. HURTADO A1 Control Booth Officer via Institutional telephone to release Inmate CLARK, H-57779, A1-141U for work in the program office position # PTR 631, RDO's Mon Tue, work hours 1400-2130. Approximately 20 minutes later Correctional Officer J. ORTIZ (A1 Floor Officer 1) advised me that Inmate CLARK stated he would not be going to work. It should be noted that inmate CLARK did receive a CDC-115 on 06/02/05, and on 02/06/05 for failure to report to work.

: Inmate CLARK'S Admission of Guilt at the time of the hearing, by entering a plea of GUILTY.

DISPOSITION: Inmate CLARK was assessed:

3 Days Forfeiture of Credits consistent with a Division "F" Offense.
 3 Days LOSS OF PHONES, Beginning on 08/09/05 and Ending on 09/09/05.
 3 Days LOSS OF YARD, Beginning on 08/09/05 and Ending on 08/19/05.
 3 Days LOSS OF DAYROOM, Beginning on 08/09/05 and Ending on 09/09/05.

Inmate CLARK was counseled and reprimanded regarding program expectations and was advised about future behavioral expectation specifically PERFORMANCE.

Inmate CLARK was referred to UCC with recommendation for: Removal from assignment and Placement on G-STATUS: For Program Failure Review.

Inmate CLARK was notified as to CCR 3327, Restoration of Forfeited Credits; CCR 3328,

<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER J.J. SANTANA, CORRECTIONAL LIEUTENANT	DATE SIGNED 8/31/05
	GIVEN BY: (Staff's Signature) [Signature]	DATE SIGNED 09/01/05

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

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CDC NUMBER H-57779	INMATE'S NAME CLARK	LOG NUMBER 07-05-A-065	INSTITUTION CSP-CAL	TODAY'S DATE 08/09/05
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

On Tuesday, ~~July~~ 09, 2005, at approximately 1740 hours, Inmate CLARK, H-57779, appeared before me in regards to this Rules Violation Report log #07-05-A-065. Inmate CLARK stated that he was in good health, acknowledged receipt of all reports, and was ready to proceed with this hearing. All time constraints and due process HAVE been met. Inmate CLARK is not a participant in the MENTAL HEALTH SERVICES DELIVERY SYSTEM (MHSDS).

STAFF ASSISTANT: A Staff Assistant was not assigned pursuant to OCR 3315(d)(2).

INVESTIGATIVE EMPLOYEE: An Investigative Employee was waived by Inmate CLARK as noted by his signature on the CDC-115A. An IE was not assigned pursuant to OCR 3315(d)(1). ~~He~~

INMATES PLEA: The charges were read to Inmate CLARK and he pled GUILTY.

INMATES STATEMENT: Inmate CLARK had no comment regarding this Rules Violation Report.

WITNESSES: Inmate CLARK chose not to have witnesses present during the hearing, as noted by Inmate CLARK'S signature on the CDC-115A.

FINDINGS: Inmate CLARK was found GUILTY of having violating CCR Section 3041 (a) for the specific Act of: PERFORMANCE. This finding is based upon the preponderance of evidence submitted at the hearing, which is considered valid and does substantiate the charge. The evidence includes

A: The Reporting Employees written report, which states in part: "I advised via Institutional telephone Correctional Officer J. ORTIZ (A1 Floor Officer) to release Inmate CLARK, H-57779, A1-141U for work. Inmate CLARK is assigned to position # PTIR 631, RDO's Mon/Tue, work hours 1400-2130. Approximately 5 minutes later Correctional Officer J. ORTIZ advised me that Inmate CLARK would not be going to work. Inmate CLARK stated: "I'm taking a vacation and I don't care". It should be noted that Inmate CLARK has receive 115's for this same offense on 06/21/05, 06/02/05, and 02/06/05.

B: Inmate CLARK'S Admission of Guilt at the time of the hearing, by entering a plea of GUILTY.

DISPOSITION: Inmate CLARK was assessed:

30 Days Forfeiture of Credits	consistent with a Division "F" Offense.
30 Days LOSS OF PHONES,	Beginning on 08/09/05 and Ending on 09/09/05.
10 Days LOSS OF YARD,	Beginning on 08/09/05 and Ending on 08/19/05.
30 Days LOSS OF DAYROOM,	Beginning on 08/09/05 and Ending on 09/09/05.

Inmate CLARK was counseled and reprimanded regarding program expectations and was advised about future behavioral expectation specifically To report to work assignment.

Inmate CLARK was referred to UCC with recommendation for: Removal from assignment and Placement on C-STATUS: For Program Failure Review.

SIGNATURE OF WRITER J.J. SANTANA, CORRECTIONAL LIEUTENANT		DATE SIGNED 8/31/05	
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	GIVEN BY: (Staff's Signature) <i>[Signature]</i>	DATE SIGNED 09/01/05	TIME SIGNED 1148

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PETITIONER'S EVIDENCE AND EXHIBITS OF CDCR 115's
THAT HAVE BEEN DROPPED AND DISMISSED ON GROUNDS OF "STACKING"
LOG# 08-08-C-013 DATED 8-11-08 AND LOG# 08-08-C-035 DATED 8-21-08
4 PAGES...

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804 to records: 8-11-08

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT

DOC NUMBER E-29255	INMATE'S NAME TANNER	RELEASE/BOARD DATE MEPP 12-13-2006	INST. CSP-CAL	HOUSING NO. C5-128U	LOG NO. 08-08-C-013
VIOLATED RULE NO(S). CCR 3041		SPECIFIC ACTS REFUSING TO WORK	LOCATION H.U. C5	DATE 08/11/08	TIME 0830 Hrs.

CIRCUMSTANCES On Monday, August 11, 2008, at approximately 0830 hours, while performing my duties as C5 Housing Unit Officer #1, I observed Inmate TANNER E-29255, C5-128L standing in front of cell 109, wiping down the food port of the cell door. After about 10-15 minutes of wiping I called Inmate TANNER over to the podium. I instructed Inmate TANNER to wipe down the Staff Office and the CCI's Office window frames. He then faced and talked to my partner, and said, "Ramirez, I don't think I will do a good job wiping down the window frames." I then ordered Inmate TANNER to address me, and reminded him that I was the one instructing him to perform the work. He walked away from me. I then told Inmate TANNER, "TANNER, I am ordering you to work and clean the dirty window panes in the Staff and CCI's Offices. Are you refusing to work and carry out my orders?" Inmate TANNER did not respond. Then he walked over to his assigned cell door and said, "I am not working." Inmate TANNER was ordered to go to his cell and receive a A-Day Inmate TANNER was advised that he would be receiving a 115 Serious Rules Violation Report. Inmate TANNER has a 115 pending for Disobeying Orders and two (2) 128-As Custodial Counseling Chronos for Unsatisfactory Work Performance. Inmate TANNER is not a participant in the Mental Health Services Delivery System (MHSDS). Inmate TANNER is aware of this report.

REPORTING EMPLOYEE (Typed Name and Signature) J. OLIVAREZ, Correctional Officer		DATE 8-12-08	ASSIGNMENT C5-71/#1	RDO'S Tue/Wed.
REVIEWING SUPERVISOR'S SIGNATURE P. ZILLS, Correctional Sergeant		DATE 8/12/08	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING	
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS	OFFENSE DIVISION: E-31-60	DATE 8/12/2008	CLASSIFIED BY (Typed Name and Signature) A. BELTRAN	HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC
X COPIES GIVEN INMATE BEFORE HEARING				
<input type="checkbox"/> CDC 115 0115A	BY: (STAFF'S SIGNATURE) S. Sanchez	DATE 8-19-08	TIME 0800	TITLE OF SUPPLEMENT N/A
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER: N/A	BY: (STAFF'S SIGNATURE) N/A	DATE N/A	TIME N/A	BY: (STAFF'S SIGNATURE) N/A

HEARING On Sunday, August 24, 2008, at approximately 1315 hours, Inmate TANNER, E-29255, appeared before me for adjudication of this Rules Violation Report (RVR), charging him with violation of the California Code of Regulations (CCR), Section 3041, specifically for "REFUSING TO WORK," a Division "E" Offense. I introduced myself as the Senior Hearing Officer (SHO) for this disciplinary hearing, and explained the hearing rules and procedures to TANNER. TANNER stated that he was in sound physical health. TANNER stated that he understood the disciplinary process and the specific charge. TANNER is not a participant in the Mental Health Services Delivery System, the Disability Placement Program, or Developmental Disability Program.

DUE PROCESS: The preliminary copy of the disciplinary report was served to TANNER within fifteen (15) days of discovery, and the hearing was held within thirty (30) days of service. All pertinent documents were issued to TANNER more than twenty-four (24) hours prior to the hearing. Time constraints have been met. There are no due process violations.

INVESTIGATIVE EMPLOYEE: Per CCR, Section 3315(d)(1), an Investigative Employee (I.E.) was not assigned because: 1) The issue is not complex, 2) Inmate TANNER is housed on the same Facility where the violation occurred, and therefore can complete his own investigation, 3) available information is sufficient for a fair and impartial hearing.

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

(CONTINUED ON RULES VIOLATION REPORT - PART C)

ACTION BY: (TYPED NAME) P. CORTEZ, Correctional Lieutenant	SIGNATURE P. Cortez	DATE 8-24-08	TIME 1630
REVIEWED BY: (SIGNATURE) W. J. PRICE, Facility C Captain	DATE 8/26/08	CHIEF DISCIPLINARY OFFICER'S SIGNATURE S. ANDERSEN, AW-Housing (C/D)-C.D.O.	DATE 8/26/08
BY: (STAFF'S SIGNATURE) S. Sanchez		DATE 8-29-08	TIME 1400

X COPY OF CDC 115 GIVEN INMATE AFTER HEARING

STATE OF CALIFORNIA

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DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

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CDC NUMBER E29255	INMATE'S NAME TANNER	LOG NUMBER 08-08-C-013	INSTITUTION CSP-CAL IV	TODAY'S DATE 08/24/08
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

EFFECTIVE COMMUNICATION: Inmate TANNER speaks fluent English, and his name does not appear on the Testing Literacy Report of inmates with T.A.B.E. Reading Scores of 4.0 or lower. Additionally, TANNER states he has a G.E.D. Effective communication was established during the hearing. Inmate TANNER successfully read the CDC 115 aloud to the SHO, and stated that he understood the report and the charges, and that he had no questions regarding the CDC 115.

STAFF ASSISTANT: Per California Code of Regulations (CCR), Section 3315(d)(2), a Staff Assistant (SA) was not assigned because TANNER is literate, understands English in written and verbal form, and the complexity of the issues are such that assistance is not necessary for TANNER to comprehend the nature of the charges or the disciplinary process. Additionally, TANNER does not need assistance that would require a confidential relationship, as described in CCR, Section 3318(b)(2)(A).

INMATE'S PLEA: The charges were read to Inmate TANNER, and he plead **NOT GUILTY**. Inmate TANNER stated, "I'm getting write-ups based on retaliation."

WITNESSES: Inmate TANNER waived his right to have witnesses present at the hearing, but did not sign the CDC 115-A to indicate his choice.

FINDINGS: Inmate TANNER was found **NOT GUILTY** of violating the California Code of Regulations (CCR), Section 3041, a Division "E" Offense, for the specific act of "Refusing to Work." This finding was based upon the definition of **stacking** as related to the inmate disciplinary process. "Stacking" is defined in part as "issuing consecutive reports for [...] work/education-related offenses before the previous report is adjudicated." This finding is based on the following:

A) This RVR (Log Number 08-08-C-013) refers in the circumstances to a "115 pending" for TANNER's refusal to obey direct orders. Specifically, the RVR (Log Number 08-08-C-005) mentioned as "pending" is dated only ten (10) days prior to this RVR, for the work-related specific act of "Disobeying a Direct Order" (to clean the Housing Unit sallyport), and had not been adjudicated prior to TANNER being issued this CDC 115 for the specific act of "Refusing to Work." Therefore, in the interest of justice, the SHO finds "stacking" issues are evident and acts to DISMISS this RVR.

DISPOSITION: This RVR is **dismissed** in the interest of justice.

APPEAL: Inmate TANNER was advised of his right to appeal the findings and/or disposition of the hearing, pursuant to the CCR, Section 3084.1. He was also advised that he would receive a complete copy of this Rules Violation Report upon final audit by the Chief Disciplinary Officer (CDO). The review and signature of the CDO affirms, reverses, or modifies this disciplinary action and/or credit forfeiture and constitutes the First Level of review for appeal purposes.

SIGNATURE OF WRITER P. CORTEZ, Correctional Lieutenant		DATE 8-24-08	
GIVEN BY: (Staff's Signature) 4.542 S. Sanchez		DATE SIGNED 8-29-08	TIME 1400
<input checked="" type="checkbox"/> COPY OF CDC 115 GIVEN TO INMATE			

804 to records: 52

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT

CDC NUMBER E-29255	INMATE'S NAME TANNER	RELEASE/BOARD DATE 2-11-07 MEPD 629255	INST. CSP-CAL	HOUSING NO. C5-128L	LOG NO. 08-08-C-
VIOLATED RULE NO(S) CCR 3041a		SPECIFIC ACTS REFUSING TO WORK	LOCATION C5 Floor	DATE 08/21/08	TIME 0900 Hr

CIRCUMSTANCES On Thursday, August 21, 2008, at approximately 0900 hours, while performing my duties as C5 Floor Officer #2, I gave Inmate TANNER E-29255, C5-128L, some assigned duties. I ordered TANNER, who is currently assigned as building clerk (CLK.C-501), the task of compiling a list of inmates who request showers in the Housing Unit. TANNER replied, "Fuck No!" I'm not going to make a list. I asked Inmate TANNER if he was refusing to work: he said, "I'm not doing that." I told Inmate TANNER that he will be getting a CDC-115 for Refusing to Work. TANNER then replied, "fine, I don't care!" Inmate TANNER was sent to his cell, and told he will be receiving an 'A' Day for that date. Inmate TANNER is not a participant in the Mental Health Services Delivery System (MHSDS). Inmate TANNER is aware of this report.

DISMISSED

REPORTING EMPLOYEE (Typed Name and Signature) M. RAMIREZ, Correctional Officer	DATE 8-26-08	ASSIGNMENT C5 Floor Clk 2	RDO'S P/m
REVIEWING SUPERVISOR'S SIGNATURE K. WOOD, Correctional Sergeant	DATE 8/26/08	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING	
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS	OFFENSE DIVISION: F 0-30	DATE A-31-08	CLASSIFIED BY (Typed Name and Signature) R. G. SUTTON
HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/>		COPIES GIVEN INMATE BEFORE HEARING	
<input type="checkbox"/> CDC 115 115A	BY: (STAFF'S SIGNATURE) S. Sanchez	DATE 9-2-08	TIME 0645
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER N/A	BY: (STAFF'S SIGNATURE) N/A	DATE N/A	TIME N/A

HEARING On Friday, September 12, 2008, at approximately 1515 hours, Inmate TANNER, E-29255, appeared before me for adjudication of this Rules Violation Report (RVR), charging him with violation of the California Code of Regulations (CCR), Section 3041(a), specifically for "REFUSING TO WORK," a Division "F" Offense. I introduced myself as the Senior Hearing Officer (SHO) for this disciplinary hearing, and explained the hearing rules and procedures to TANNER. TANNER stated that he was in sound physical health. TANNER stated that he understood the disciplinary process and the specific charge. TANNER is not a participant in the Mental Health Services Delivery System, the Disability Placement Program, or Developmental Disability Program.

DUE PROCESS: The preliminary copy of the disciplinary report was served to TANNER within fifteen (15) days of discovery, and the hearing was held within thirty (30) days of service. All pertinent documents were issued to TANNER more than twenty-four (24) hours prior to the hearing. Time constraints have been met. There are no due process violations.

INVESTIGATIVE EMPLOYEE: Per CCR §3315(d)(1), an Investigative Employee (I.E.) was not assigned because: 1) The issue is not complex, 2) Inmate TANNER is housed on the same Facility where the violation occurred, and can conduct his own investigation, and (3) available information is sufficient for a fair and impartial hearing.

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

(CONTINUED ON RULES VIOLATION REPORT - PART C)

ACTION BY: (TYPED NAME) H. L. DRAKE, Correctional Lieutenant	SIGNATURE [Signature]	DATE 9/24/08	TIME 15
REVIEWED BY: (SIGNATURE) W. J. PRICE, Facility Captain	DATE 9/26/08	CHIEF DISCIPLINARY OFFICER'S SIGNATURE S. ANDERSEN, AW-Housing (C/D)-C.D.O.	DATE 9/29/08
<input checked="" type="checkbox"/> COPY OF CDC 115 GIVEN INMATE AFTER HEARING	BY: (STAFF'S SIGNATURE) S. Sanchez	DATE 10-7-08	TIME 0800

CDC 115 (7/88)

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STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE ____ OF ____

CDC NUMBER E-29255	INMATE'S NAME TANNER	LOG NUMBER 08-08-C035	INSTITUTION CSP-CAL	TODAY'S DATE 09-12-08
<input type="checkbox"/> SUPPLEMENTAL <input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER _____				

EFFECTIVE COMMUNICATION: The SHO established effective communication with Inmate TANNER, when Inmate TANNER successfully read the CDC-115 aloud and explained the circumstances in his own words. Inmate TANNER stated that he understood the report and the charges, and that he had no questions regarding the CDC-115.

STAFF ASSISTANT (S.A.): A Staff Assistant was not assigned. Inmate TANNER understands English in written and verbal form, the issues are not complex and Inmate TANNER does not meet the criteria for assignment of a Staff Assistant per CCR § 3315(d)(2)(A).

INMATE'S PLEA: The charge was read and Inmate TANNER pled NOT GUILTY. Inmate Tanner stated, "C/O. Ramirez told me to count how many people were in every cell. I did a shower list twice before. He skipped people on the list and then blamed me for it. They thought it was my fault. This is Olivarez's Co-Worker writing this 115. All these write ups are because I wrote a staff complaint on Officer Ramirez."

WITNESSES: Inmate TANNER requested no witnesses present at his hearing, as noted by his signature on the 115-A.

FINDINGS: Inmate TANNER was found NOT GUILTY of violating CCR § 3041(a), a division "F" Offense, for the specific act of REFUSING TO WORK. This finding was based upon the definition of "STACKING" as related to the inmate disciplinary process. [REDACTED] is defined in part as, "Issuing consecutive reports for any offense before the previous report has been adjudicated." This finding is based on the following;

1) This RVR Log#, 08-08-C035, was written prior to RVR Log# 08-08-C005 had been fully adjudicated, which was also work related, and written as "REFUSING TO WORK", therefore violating Inmate Tanners Due Process Rights. Therefore, In The Interest Of Justice, the SHO finds "STACKING" issues are evident and acts to DISMISS this RVR.

DISPOSITION: This RVRV is DISMISSED In the Interest of Justice.

APPEAL RIGHTS: Inmate TANNER was advised of his rights to appeal the findings and/or disposition of the hearing, pursuant to CCR § 3084.1 and advised he would receive a complete copy of this hearing upon final audit by the Chief Disciplinary Officer (CDO), whose signature affirms, reverses or modifies this disciplinary action and constitutes the First Level of Review for appeal purposes.

<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER H.L. DRAKE, CORRECTIONAL LIEUTENANT	DATE SIGNED 9/24/08
	GIVEN BY: (Staff's Signature) [Signature]	DATE SIGNED 10-7-08

CDC 115-C (5/95)



OSP 99 25082

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ATTACHMENTS CDCR ADMINISTRATIVE REVIEW FORMS
602 AND ATTACHMENTS AND ALSO CDCR FORM 695 SCREENING FORMS
5 PAGES...

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State of California
CDC FORM 695
RECEIVED CAL: APPEALS JAN 20 2010
CDC 602 Inmate/Parolee Appeals
CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the SECOND Level

January 12, 2010


CLARK, H57779
FC0400000000220L

Log Number: CAL-A-

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

There has been too great a TIME LAPSE between when the action or decision occurred and when you filed your appeal with no explanation of why you did not or could not file in a timely fashion. Time limits expired per CCR 3084.6(c). Therefore, if you would like to pursue this matter further, you must submit an explanation and supporting documentation explaining why you did not or could not file your appeal timely.



Appeals Coordinator
Calipatria State Prison

SCREENED OUT JAN 20 2010

NOTE: Please make the changes or corrections requested and resubmit the original appeal within fifteen working days. Once an appeal has been cancelled that appeal may not be resubmitted. However a separate appeal can be filed on the cancellation decision. The original appeal may only be resubmitted if the appeal on the cancellation decision is granted.

PERMANENT APPEAL ATTACHMENT DO NOT REMOVE

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RECEIVED CAL APPEALS JAN 1 2 2010

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INMATE/PAROLEE
APPEAL FORM
CDC 602 (12/37)

Location: Institution/Parole Region

Log No.

Category

1.

1.

2.

2.

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME M. CLARK	NUMBER H57779	ASSIGNMENT C. VOG	UNIT/ROOM NUMBER C4.220
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A. Describe Problem: BACK IN "05" 7-20-05, 7-21-05, & 7-22-05, I WAS WRITTEN A 115 RULE VIOLATION FOR THE SPECIFIC ACT OF PERFORMANCE 304(A) WITH THE SAME DISPOSITION & RECOMMENDATION OF BEING TAKEN TO ICC & REMOVED FROM JOB ASSIGNMENT, ON 8-9-05, I WAS HEARD FOR THESE (3) THREE 115'S & FOUND GUILTY, BUT THIS WAS ILLEGAL TO FIND ME GUILTY FOR (3) THREE OF THE SAME RULE VIOLATIONS & SAME DISPOSITION UNDER "STACKING" IN THE JOB PERFORMANCE & JOB ASSIGNMENT CRITERIA, AS WHEN I WAS FIRST WRITTEN UP, ON 7-20-05 FOR JOB PERFORMANCE & TOLD (SEE ATTACHMENTS)

B. Action Requested: TO HAVE THE EXTRA 2 TWO WRITE UPS I RECEIVED TO BE DROPPED, DISMISSED, & RECEIVE BACK THE 60 DAYS & POINTS I RECEIVED FOR THESE EXTRA 2 TWO 115 RULE VIOLATIONS, ON THE GROUNDS OF STACKING & IN THE INTEREST OF JUSTICE

Inmate/Parolee Signature: Nathan Clark Date Submitted: 1-10-09

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed

CDC Appeal Number: _____

Board of Control form BC-1E, Inmate Claim

SCREENED OUT JAN 1 2 2010
SCREENED OUT JAN 2 0 2010

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RECEIVED CAL APPEALS JAN 12 2010

1 I WAS BEING REQUESTED TO BE TAKEN TO ICC
2 & REMOVED FROM JOB ASSIGNMENT, AFTER NOT
RECEIVED CAL APPEALS JAN 20 2010
3 BEING ABLE TO PERFORM JOB, EVERYTHING WAS NOTED
4 & ME NOT RETURNING TO WORK, & WAITING ON THE
5 DISPOSITION & RECOMMENDATION, SHOULD NOT HAVE
6 HAD ME BE ALLOWED, TO RECEIVE ADDITIONAL
7 115 RULE VIOLATIONS FOR PERFORMANCE WITH THE
8 SAME DISPOSITION & RECOMMENDATION, OF BEING
9 REFERRED TO ICC & REMOVED FROM JOB
10 ASSIGNMENT, & IF FOUND GUILTY OF THIS & THESE
11 ALLEGATIONS I SHOULD HAVE HAD ONLY (1) ONE
12 THE FIRST INITIAL RULE VIOLATION 115, FOR
13 PERFORMANCE STAND & BEEN ASSESSED (30)
14 THIRTY DAYS ONLY FOR INITIAL 115 RULE VIOLATION
15 PERFORMANCE & HAD THE ONLY (2) TWO 115 RULE
16 VIOLATIONS FOR THE SAME OFFENSE DROPPED
17 & DISMISSED, IN THE INTEREST OF JUSTICE
18 & FOR THE ILLEGAL GROUNDS OF "STACKING".
19
20
21
22
23
24
25
26
27

SCREENED OUT JAN 12 2010

SCREENED OUT JAN 20 2010

29 of 51

State of California

CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the SECOND Level

January 20, 2010

CLARK, H57779

FC0400000000220L

Log Number: CAL-A-

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

There has been too great a TIME LAPSE between when the action or decision occurred and when you filed your appeal with no explanation of why you did not or could not file in a timely fashion. Time limits expired per CCR 3084.6(c). Therefore, if you would like to pursue this matter further, you must submit an explanation and supporting documentation explaining why you did not or could not file your appeal timely.

Your response has been noted, however, your appeal remains untimely, and will not be accepted. Do not resubmit.

DW Bell CCH

Appeals Coordinator
Calipatria State Prison

NOTE: Please make the changes or corrections requested and resubmit the original appeal within fifteen working days. Once an appeal has been cancelled that appeal may not be resubmitted. However a separate appeal can be filed on the cancellation decision. The original appeal may only be resubmitted if the appeal on the cancellation decision is granted.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

30 of 51

State of California

CDC FORM 695

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~~Appeal has been denied, however, your appeal remains untimely, and will not be accepted. Do not resubmit.~~

DW Bell, CCH

Appeals Coordinator
Calipatria State Prison

NOTE: Please make the changes or corrections requested and resubmit the original appeal within fifteen working days. Once an appeal has been cancelled that appeal may not be resubmitted. However a separate appeal can be filed on the cancellation decision. The original appeal may only be resubmitted if the appeal on the cancellation decision is granted.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

30 of 31

TO: APPEALS COORDINATOR

RECEIVED CAL APPEALS JAN 20 2010

THE REASON AS TO WHY I FILLED MY 6.0.2 SO LATE, IS I HAD NO IDEAL OF THIS "STACKING" PROCEDURE, DEALING WITH 115'S WERE ILLEGAL UP UNTIL RECENTLY WHEN I TURNED IN MY 6.0.2, ALSO THIS ISSUE SHOULD HAVE BEEN CORRECTED INITIALLY BY THE HEARING OFFICER, TO UP HOLD JUSTICE & IN THE INTREAST OF JUSTICE, BECAUSE AS WAS HIS POSITION TO DO SO, & ALSO THE COURTS HAVE STATED THAT THERE IS NO TIME BARS TO UNAUTHORIZED SENTENCES

SINCERLY

& THANK YOU

NATHAN CLARK

H57779 - C4.220

~~DATE~~ ~~1-13-10~~

DATE: 1-13-10

SCREENED OUT JAN 20 2010

EXHIBIT OF PETITIONER'S LEGAL STATUS SUMMARY

SHEET (DOCUMENTING PETITIONER'S ADDING OF CREDITS DATED 7/20/2005,
7/21/2005, and 7/22/2005 [REDACTED] 2 pages...

33 of 58

LEGAL STATUS SUMMARY TYPE- D CAL ** DISCREPANT **12/10/2009 21:34

CDC NUMBER	NAME	ETHNIC	BIRTHDATE
H57779	CLARK, NATHAN, ALLEN	BLA	08/15/1973

ACA CLARK, NATHAN, ALLAN

TERM STARTS	MAX REL DATE	MIN REL DATE	MAX ADJ REL DT	MIN ADJ REL DT
09/06/1995	03/22/2023	01/28/2020	03/22/2023	01/28/2020

BASE TERM 10/00 + ENHCMNTS 18/04 = TOT TERM 28/04 PAROLE PERIOD 3 YRS

PRE-PRISON + POST SENTENCE CREDITS

CASE P2900-5 P1303-3 P2900-1 CRC-CRED MH-CRED P4019 P2931 POST-SENT TOT

YA022456

225

33

28

286

PC296 DNA COMPLETED

NOTIFICATION REQUIRED PER P3058.6

REC'D DT/ COUNTY/	CASE	SENTENCE DATE	CREDIT	OFFENSE
CNT OFF-CODE	DESCRIPTION		CODE	DATE

CONTROLLING PRINCIPAL & CONSECUTIVE (INCLUDES ENHANCEMENTS/OFFENSES):

---CONTROLLING CASE---

9/06/1995 LA YA022456 8/08/1995 NO STRIKES: 2
01 P667(A) 01 PFC SERIOUS 6

01 P212.5(B)

ROBBERY 2ND

(H)WPN

6 12/27/1994

P12022.5(A)

03 USE F'ARM

6

02 P212.5(B)

ROBBERY 2ND

(H)WPN

-CS

6 12/27/1994

P12022.5(A)

03 USE F'ARM

6

2933.1

NON-CONTROLLING OFFENSES:

9/06/1995 LA YA022456 8/08/1995 NO STRIKES: 2

03 P245(A)(2)

ASLT W/FIREARM

3 12/27/1994

2933.1

TRAN	DATE	END DATE	LOG NUMBER	RULE	D A Y S
TYPE				NUMBER	ASSESS LOST REST DEAD

BEG 12/04/1992

ADD 09/06/1995

*****BEG- BAL*****

YA022456

34 of 34

LEGAL STATUS SUMMARY ---CONTINUATION---

PAGE

2

CDC NUMBER	NAME
H57779	CLARK, NATHAN, ALLEN

DD	09/06/1995	YA022456			
CL	09/24/1996	9609082	3005	30	30
DD	09/06/1995	YA022456			
DD	09/06/1995	YA022456			
CL	11/18/1996	9611065	3005	61	61
DD	09/06/1995	YA022456			
CL	12/02/1996	9612008	3005	90	90
DD	09/06/1995	YA022456			
DD	09/06/1995	YA022456			
CL	05/02/2001	0501A004	3041A	30	30
DD	09/06/1995	YA022456			
CL	09/21/2001	0901A031	3041B	30	30
DD	09/06/1995	YA022456			
CL	06/06/2002	0206A013	3041	30	30
DD	09/06/1995	YA022456			
CL	06/07/2002	0206A14	3041A	30	30
DD	09/06/1995	YA022456			
CL	10/07/2002	1002A003	3005A	90	90
DD	09/06/1995	YA022456			
CL	12/15/2002	1202A038	3005B	90	90
DD	09/06/1995	YA022456			
CL	07/20/2005	0705A050	3041A	30	30
CL	07/21/2005	0705A064	3041A	30	30
CL	07/22/2005	0705S065	3041A	30	30
DD	09/06/1995	YA022456			
CR	11/21/2006	9612008	3005		90
CR	11/21/2006	0501A004	3041A		30
CR	11/21/2006	0901A031	3041B		30
CR	11/21/2006	0206A14	3041A		30
CR	11/21/2006	1202A038	3005B		90
CR	11/21/2006	0705S065	3041A		30
DD	09/06/1995	YA022456			

CURRENT PC BALANCE: 0

CURRENT BC BALANCE: 1149

(b) **GROUND TWO:** _____

Supporting FACTS: _____

Did you raise GROUND TWO in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): _____

(2) Case number or citation: _____

(3) Result (attach a copy of the court's opinion or order if available): _____

(c) **GROUND THREE:** _____

Supporting FACTS: _____

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): _____
- (2) Case number or citation: _____
- (3) Result (attach a copy of the court's opinion or order if available): _____

(d) **GROUND FOUR:**

Supporting FACTS:

☐ Yes ☐ No.

(1) Nature of proceeding (i.e., petition for review, habeas petition): _____

(2) Case number or citation: _____

(3) Result (attach a copy of the court's opinion or order if available): _____

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Name(s) of judges (if known): _____

(f) Grounds raised: _____

(g) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☒ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☒ Yes ☐ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

TORRANCE COURT L.A. COUNTY

(b) Give date and length of the future sentence: 28 YEARS 4 MONTHS

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☒ Yes ☐ No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:



Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR



Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court: _____

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

10-7-10

(DATE)

Malcolm Clark

SIGNATURE OF PETITIONER

SUPREME COURT
FILED

AUG 18 2010

Frederick K. Ohlrich Clerk

S183049

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re NATHAN CLARK on Habeas Corpus.

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780; *In re Dexter* (1979) 25 Cal.3d 921.)

GEORGE

Chief Justice

42 of 51

SUPERIOR COURT OF CALIFORNIA
COUNTY OF IMPERIAL

☐ 220 Main Street
Brawley, CA 92227

☐ 415 4th Street
Calexico, CA 92231

☒ 939 Main Street
El Centro, CA 92243

☐ PO Box 1087
2124 Winterhaven Drive
Winterhaven, CA 92243

☐ Jail Division
328 Applestill Road
El Centro, CA 92243

☐ Juvenile Division
324 Applestill Road
El Centro, CA 92243

ENDORSED
MAR 23 2010

Nathan Clark
Plaintiff/Petitioner,

VS.

Larry Small, Warden
Defendant/Respondent.

Kristine Kussman

SUPERIOR COURT
IMPERIAL COUNTY
JULIEN, CLERK
BY KARINA PALACIO
DEPUTY

Case No. EHC01298

DECLARATION OF MAILING

State of California, County of Imperial

I, the undersigned, certify under penalty of perjury, that I am a Deputy Clerk of the above entitled Court and not a party to the within action; that I mailed a true and correct copy on 03/23/10 of the **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS** to each of the persons listed below, by depositing such notice in the United States Mail, enclosed in sealed envelopes with postage prepaid:

Nathan Clark
CDC#: H-57779
P.O. Box 5006
Calipatria, CA.

Office of the Imperial County District Attorney**
940 Main Street
El Centro, CA. 92243

**Sent via inter-office mail

Dated: March 23, 2010

KRISTINE KUSSMAN, COURT EXECUTIVE OFFICER

By: *Karina Palacio*
Deputy Clerk

43 of 51

ENDORSED

MAR 19 2010

Karina Hussman

SUPERIOR COURT
IMPERIAL COUNTY
KARINA PALACIO, CLERK
BY KARINA PALACIO
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL

In re:

NATHAN CLARK,

On Habeas Corpus.

Case No. EHC 01298

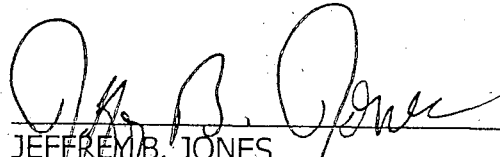
**ORDER DENYING PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner, an inmate currently incarcerated at Calipatria State Prison, initiated this action by a petition dated February 18, 2010. Petitioner alleges due process violations regarding respondent's "stacking" of three instances of job performance discipline in July 2005.

Claims asserted in petitions for writ of habeas corpus must be raised as promptly as circumstances allow; a court will not consider issues not raised in a timely manner. *In re Clark* (1993) 5 Cal.4th 750. Petitioner has failed to explain the significant delay in this matter.

Petition DENIED.

DATED: March 19, 2010


JEFFREY B. JONES
Judge of the Superior Court

MEMORANDUM OF PETITIONERS POINTS AND AUTHORITIES

45 of 54

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF CASE

On 7-20-05 Petitioner a CDCR Inmate, recieved a CDCR 115 rule violation for the specific act of Performance at which time, it was recommended and requested, that Petitioner be taken to ICC and removed from Job assignment/work assignment as disposistion. The next day on 7-21-05 after respecting officer Recommendation and Request Petitioner was awaiting the Hearing of 115 rule violation written on previous day, (7-20-05) since Recommendation was to be removed and while not choosing to report to work on the following day, Petitioner was written up once more on 7-21-05 for the same Specific act of Performance with the same Disposition, of being Requested and Recommended to be removed from Job assignment/Work assignment. Also following the next day Petitioner on 7-22-05, chose to still not go to work, (Because of negative Rapport and Situation) and He / Petitioner was written up again for a 115 rule violation for the Specific act of Performance, with the same Disposition of Request and Recommendation of Removal of Job/work assignment.

On August 9th, 2005 Petitioner (3) three, 115 rule violation for Specific act of Perfomance were Heard by CDCR HEARING OFFICER at which time Petitioner was found Guilty of all (3) three, 115's and assessed (30) Thirty days Loss/Forfiture of Credits, GOOD TIME WORK TIME CREDITS for all (3) three 115's which total to a loss of (90) Ninety days of GOOD TIME WORK TIME CREDITS.

Around January 2010 Petitioner in His Due Diligence, learned that this form of writting Inmates up, "Issuing Consecut-

1 ive report for any offense before the Previous Report has been
2 Adjudicated, is a Illegal Procedure under the Title of "STACKING".

3 Upon learning of this Procedure, Petitioner Set forth to address
4 this Due Process of Law Violation Administratively, but was
5 Denied access to the Administrative Grievance 6.0.2 Appeal
6 Process, on Grounds "of to Great a Time Lapse" so Petitioner
7 sought Relief to the Tribunal of the COURTS to have this
8 matter addressed and Adjudicated and to be awarded just and
9 fair application and the Granting and Protection of My
10 Constitutional Rights and Constitutional Fairness.

11
12 ARGUMENT 1

13 Petitioner contends and asserts that this policy of "STACKING"
14 " is a policy of procedure, that Hearing Officer set in position of Integrity are to enforce
15 and uphold in the Interest of Justice, as to Adjudicate the matters of Hearings Fairly, and
16 to award the Justices of Procedure's and Policy's.

17 Petitioner was clearly Denied this and Denied it also as He/Petitioner attempted to
18 appeal it (the matter) and receive proper and fair Redress.

19 Now Petitioner seeks the COURTS to award Granting of Appeal in Fairness and the
20 replacing of His/Petitioner GOOD/WORK TIME CREDITS, that was wrongly taken in the Denial
21 and Violation of His/Petitioner DUE PROCESS OF LAW RIGHT 5th and 14th Admenment.

22 ARGUMENT 2

23 Petitioner asserts and contends that Imposition of Unauthorized sentence is a act
24 which is in excess of courts jurisdiction and may be subject of later review even after
25 affirmance of judgement on direct appeal; Unauthorized sentences is not subject to Harmless
26 Error ,Nor does it ripen into sentence Authorized by Law with passage of Time.

27 General rule that unexplained delay in seeking relief may bar Habeas Corpus relief does
28 not apply to bar correction of unauthorized sentence.

Failure to object to defective verdicts, Failure to specify degree of offense, which

1 Failure to object to defective verdicts, Failure to specify degree of offense, which
2 necessarilly results in punishment greater than that authorized by Jury, does not bar
3 granting of Habeas Corpus relief under theroy of waiver or Invited Error, Following In Re
4 Birdwell (1996) 58 Cr.2nd 244, and Petitioner contends and asserts that His/Petitioner
5 Disposition outcome was an unauthorized sentence based on His/Petitioner violation of His
6 DUE PROCESS OF LAW right and He/Petitioner should not be timed barred or restricted from
7 seeking relief in this matter of unauthorized sentence and Petitioner should be Granted
8 relief by this Court to afford Petitioner correction of Violations of Rights and to
9 restore Petitioner's GOOD/WORK TIME CREDITS and Dismissing the following (2) Two 115 rule
10 violations in the Interest of Justice and the Guidelines of C.D.C.R. Policy against
11 "STACKING".

12 STATEMENT OF FACTS

13 "STACKING" is illegal and against CDCR policy ,as it does
14 not allow the compiling of 115 rule violations for WORK/
15 EDUCATION related offenses, until the initial write has been
16 adjudicated and if it is done than only the initial write up
17 115 can be heard and adjudicated and the following 115 rule
18 violations, in the interest of justice,must be dismissed as
19 policy and procedure dictates and also Due Process law.But
20 Petitioner was not awarded this relief of policy and procedure
21 and also Due Process of Law,when initial Hearing Officer
22 should have awarded Petitioner this remedy,but failed to
23 enforce and up hold Policy against "STACKING".

24 Petitioner states also as Petitioner attempted to address
25 this issue and matter administratively Petitioner was Denied
26 this access on grounds of to "Great of a time Lapse",but as
27 Imposition of an unauthorized sentence,is a act which is in
28 excess of COURTS jurisdiction,CDCR actions on illegal

1
2 sentences Disposition, are also GOVERNED under this case law
3 of DUE PROCESS OF LAW, and in Petitioner second attempt to still
4 have ADMINISTRATIVE grievance 6.0.2. appeal heard on Merits
5 Petitioner informed CDCR APPEALS COORDINATOR, of policy and
6 Procedure and CASE LAW against unauthorized sentences, and
7 Petitioner was still Denied access to resolve Issues and
8 Matters on a ADMINISTRATIVE level, so Petitioner has sought
9 to have Issues and Matters of Violations to be reviewed by
10 the COURTS to afford Petitioner REDRESS, for wrongs and
11 Constitutional violations of DUE PROCESS OF LAW and to have
12 (60) sixty days GOOD/WORK TIME CREDITS RESTORED and to also
13 have CDCR 115 rule violations LOG# 07-05-A-064 and LOG#
14 07-05-A-065 DISMISSED and DROPPED in the interest of Justice
15 as Policy and Procedures GOVERNS and INSTRUCTS. As also
16 following ruling and case law in re Birdwell (1996) 58 CR.2nd 244
17 as to no time limits as to address UNAUTHORIZED SENTENCES.

18 CONCLUSION

19 Based on the foregoing arguments and authorities
20 Petitioner respectfully request that the Habeas Corpus petition
21 Writ be GRANTED and have Petitioner (60) sixty days GOOD/WORK
22 TIME CREDITS restored and to have 115 rule violations LOG#
23 07-05-A-064 and LOG# 07-05-A-065 DISMISSED and DROPPED, as in
24 Fashion with Policy and Procedure of CDCR on this ISSUE of
25 "STACKING".

26
27 DATE: 10-7-10

28
RESPECTFULLY SUBMITTED

Nathan Clark
PRO SE
NATHAN CLARK

49 OF 51

REASON FOR DELAY TO TO APPEAL TO
THE SUPREME COURT OF CALIFORNIA

PETITIONER ASSERTS THAT IN HIS DEFENSE TO SEND HIS APPEAL TO THE CALIFORNIA SUPREME COURT IN A TIMELY FASHION, PETITIONER CLAIMS THAT SINCE THE RECEIVAL OF HIS DENIAL FROM SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL CASE# EHC 01298, ON OR DATED 3-19-10 PETITIONER HAS BEEN ON A LOCKDOWN/MODIFIED PROGRAM, WHICH HAS DENIED HIM ACCESS TO THE COURTS, AND DUE TO RECENTLY BEING ALLOWED TO GO TO LAW LIBRARY HERE AT CALIPATRIA STATE PRISON (EFFECTIVE DATE 5-20-10) PETITIONER ASSERTS HIS DUE DILIGENCE IN SUBMITTING HIS APPEAL TO HIS DENIAL OF HABEAS WRIT CASE # EHC01298.

PETITIONER ALSO HAS SENT EVIDENCE OF THIS DELAY TO ACCESS COURTS IN A TIMELY FASHION ON THIS MATTER (SEE PROGRAM STATUS REPORT CAL-INST-10-004 DATED 3-22-10 - 5-20-10) (1 OF 10 PAGES)

VERIFICATION

(C.C.P. § 446 & 2015.5: 28 U.S.C. § 1746)

STATE OF CALIFORNIA
COUNTY OF IMPERIAL

I, NATHAN CLARK PETITIONER DECLARE UNDER PENALTY OF PERJURY THAT: I AM THE
IN THE ABOVE ENTITLED ACTION. I HAVE READ THE FOREGOING DOCUMENTS
AND KNOW THE CONTENTS THEREOF AND THE SAME IS TRUE OF MY OWN KNOWLEDGE EXCEPT AS
TO MATTERS STATED THEREIN UPON INFORMATION AND BELIEF AND AS TO THOSE MATTERS, I
BELIEVE THEM TO BE TRUE.

EXECUTED THIS 7TH DAY OF OCTOBER 2010 AT CALIPATRIA STATE PRISON
CALIPATRIA, CALIFORNIA 92233-5002.

Nathan Clark
SIGNATURE (DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. §1013(a) & 2015.5: U.S.C. § 1746)

I, NATHAN CLARK AM A RESIDENT OF CALIPATRIA STATE PRISON, IN THE COUNTY OF
IMPERIAL, STATE OF CALIFORNIA. I AM OVER EIGHTEEN (18) YEARS OF AGE AND AM / AM NOT A
PARTY OF THE ABOVE ENTITLED ACTION. MY STATE PRISON ADDRESS IS P.O. BOX 5002,
CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA 92233-5002.

ON OCT. 7TH 2010 IS SERVED THE FOREGOING:

1 ORIGINAL
+ 2 COPIES

TO SOUTHERN DISTRICT COURT
880 FRONT ST. SUITE 4290
SAN DIEGO, CA. 92101-8900

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY THEREOF, ENCLOSED IN A SEALED
ENVELOPE(S) WITH POSTAGE THEREON FULLY PAID, IN ATHE UNITED STATES MAIL, IN A DEPOSIT
BOX SO PROVIDED AT CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA 92233-5002.

ATTN: CLERK TO SOUTHERN DISTRICT COURT
880 FRONT ST. SUITE 4290
SAN DIEGO CALIF. 92101-8900

THERE IS DELIVERY SERVICE BY UNITED STATE MAIL AT THE PLACE SO ADDRESSED, AND THERE IS
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE SO ADDRESSED.
I DECLARE UNDER PENALTY OF PERJURY THE FORGOING IS TRUE AND CORRECT.

DATE

10-7-

2010

Nathan Clark
DECLARANT / PRISONER

51 OF 51

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Nathan Clark

DEFENDANTS

L. S. McEwen

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Imperial

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(U.S. PLAINTIFF CASES ONLY)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Nathan Clark
P.O. Box 5006
Calipatria, CA 92233
H-57779

2254 X 1983
FILING FEE PAID
Yes No X
IFP MOTION FILED
Yes X No
COPIES SENT TO
Court X ProSe

FILED
OCT 12 2010
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | PT | DEF | PT | DEF |
|----------------------------|----------------------------|----------------------------|----------------------------|
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State Incorporated or Principal Place of Business in This State
- Citizen of Another State Incorporated and Principal Place of Business in Another State
- Citizen or Subject of a Foreign Country Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act 20 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS.	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(e))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 530 General	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE

10/12/10

SIGNATURE OF ATTORNEY OF RECORD

CR

[Signature]